

HISTORICAL DIVISION[223]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby amends Chapter 48, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

The amendments to Chapter 48 are necessary to clarify changes to this program resulting from changes in the law enacted by 2009 Iowa Acts, Senate File 481. These amendments will permit developers to claim tax credits for preservation work on qualified buildings. Their work will employ people, stimulate economic growth, help to restore historic properties in disaster areas, and provide housing and business spaces in the completed projects.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary, as public comment was sought and received prior to the rule making and the amendments confer a benefit to constituents. The amendments must be filed immediately to allow applicants time to prepare for a July 1 filing window. There is an immediate need for applicants that will bring a significant number of jobs to the state and for applicants that need to commence work on buildings that were adversely affected by disasters in 2008.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective on June 16, 2009, as they confer a benefit on and remove a restriction from the constituents. There will be an immediate positive economic impact on the state as these amendments will help constituents renovate historic buildings that were damaged in 2008 state and federal disaster areas.

The Department adopted these amendments on June 16, 2009.

These amendments became effective on June 16, 2009.

These amendments are intended to implement Iowa Code chapter 303 and chapter 404A as amended by 2009 Iowa Acts, Senate File 481.

The following amendments are adopted.

ITEM 1. Amend rule **223—48.2(303,404A)**, definitions of “Commercial property,” “Mixed-use property,” “Residential property” and “Tax credit year,” as follows:

“*Commercial property*” means a building used for retail, office, or other ~~business~~ uses not otherwise ~~classified as residential use pursuant to the Iowa state building code~~ defined in this rule.

“*Mixed-use property*” means ~~a~~ an eligible property that includes three or more residential units and may also contain a commercial property component in the same building.

“*Residential property*” means a building with two or fewer residential units, with each unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

“*Tax credit year*” means the tax year in which a tax credit certificate holder is eligible to redeem a tax credit certificate based on the availability of tax ~~credit funds~~ credits for an eligible project.

ITEM 2. Adopt the following new definitions in rule **223—48.2(303,404A)**:

“*Applicant*” means the person, partnership, corporation, qualifying nonprofit organization, or public agency applying for the tax credit. In most cases, this will be the entity holding a fee-simple interest in the property or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits. If an application is made by someone other than the fee-simple owner, the application must be accompanied by a written statement signed by the fee-simple owner indicating the fee-simple owner does not object to the applicant claiming the tax credit.

“*Barn*” means an agricultural building or structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

“Disaster recovery project” means an eligible property located in an area declared a disaster area by the governor of Iowa or by the president of the United States. The property must have been physically impacted as a result of the disaster.

“Employment base” means the number of jobs that exist at an eligible property on the date part one of the application is approved.

“New permanent jobs” means the number of new jobs that exist at an eligible property two years after the tax credit certificate is issued. New permanent jobs are calculated as those over and above the employment base.

“Placed in service” means the date on which a building receives a certificate of occupancy from the applicable city or county official or the date on which the building is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

“Qualifying nonprofit organization” means an organization, other than governmental bodies, described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code.

ITEM 3. Amend rule 223—48.4(303,404A) as follows:

223—48.4(303,404A) Qualified and nonqualified rehabilitation costs.

48.4(1) Qualified rehabilitation costs are as defined in Section 47, rehabilitation credit, of the Internal Revenue Code. ~~To view Section 47 online, visit www.nps.gov/history/local-law/FHPL_RehabCredit%20.pdf.~~

48.4(2) to 48.4(4) No change.

48.4(5) Only qualified rehabilitation costs incurred during the 24-month period immediately prior to the ~~project completion date~~ the building was placed in service may be used for determination of historic tax credits, excluding any costs incurred prior to inception of this program.

a. No change.

b. Owners Applicants who undertake rehabilitation projects without prior approval from the SHPO do so at their own risk.

48.4(6) No change.

ITEM 4. Amend rule 223—48.5(303,404A) as follows:

223—48.5(303,404A) Rehabilitation cost limits and amount of credit.

48.5(1) and 48.5(2) No change.

48.5(3) For residential or mixed-use property, the amount of rehabilitation costs shall not exceed \$100,000 per residential unit excluding any qualified rehabilitation costs for the public or commercial space and excluding any qualified rehabilitation costs for the weather surfaces of the building envelope including exterior windows and doors.

48.5(4) No change.

48.5(5) Applicants may develop subsequent projects for qualified rehabilitation costs not previously included in a tax credit application for a building which had tax credits previously reserved or awarded. Each subsequent application shall meet eligibility requirements as stated in subrules 48.5(1) to 48.5(4) and shall be reviewed individually and independently. ~~The cumulative total for applications for buildings funded through the small projects funding queue shall not exceed \$500,000. Any application for a building previously funded through the small projects funding queue that causes the cumulative total for that building to exceed \$500,000 may be considered for funding in accordance with rule 223—48.8(303,404A).~~

a. Applicants who select to phase their work under the federal historic tax credit program may submit individual state applications for each phase of the federal project. Phased federal projects shall not apply for the small projects fund.

b. For applicants receiving credits through the small projects fund, the cumulative total for multiple applications for a single building shall not exceed \$500,000 in qualified rehabilitation costs.

The SHPO will not accept an application for a building previously receiving credits through the small projects fund that causes the cumulative total to exceed \$500,000. The applicant may either:

(1) Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

(2) Apply for only the qualified rehabilitation costs up to a cumulative total of \$500,000. If the applicant has already received and claimed a tax credit certificate on the applicant's annual tax return, the applicant shall select this option.

ITEM 5. Amend rule 223—48.6(303,404A) as follows:

223—48.6(303,404A) Application and review process.

48.6(1) All applications for historic tax credits shall be on the current state fiscal year's forms and in accordance with the current state fiscal year's instructions provided by the SHPO. All applications must be complete and include all required supporting documentation before being considered for review and before beginning the review periods outlined in subrule 48.6(3). Application forms are available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. Applications may also be downloaded from the ~~following Web site: www.state-ia.us/government/dca/shsi/preservation/financial_assistance/state_tax_credit/ia_state_tax_credit.html~~ department of cultural affairs—state historical society of Iowa Web site.

a. Part one of the application identifies the eligibility of the property for the historic tax credit. Part one of the application is accepted year-round. Part one of the application must include all requested information. SHPO staff shall notify the applicant ~~in writing~~ if part one of the application is incomplete. Incomplete applications will not be processed.

b. Part two of the application provides a detailed description of the rehabilitation project. Part two of the application is accepted when tax credits are available for the fund specified by the applicant pursuant to subrule 48.7(6) or, if no tax credits are available, in accordance with rule 223—48.8(303,404A). Part two of the application must include all requested information. SHPO staff shall notify the applicant ~~in writing~~ if part two of the application is incomplete. Incomplete applications will not be processed.

c. Part three of the application provides the information and documentation required to request certification of project completion and includes an economic impact questionnaire. Part three of the application shall be submitted within six months of the date on which the building is placed in service or, if the project is complete, part three of the application may be submitted simultaneously with part two of the application. Part three of the application must include all requested information including certification in accordance with subrule 48.4(6). SHPO staff shall notify the applicant ~~in writing~~ if part three of the application is incomplete. Incomplete applications will not be processed. Incomplete applications may be subject to abandonment as outlined in rule ~~223—48.11(303,404A)~~ 223—48.12(303,404A).

d. Amendments to applications. An applicant shall amend an approved part one of the application or an approved part two of the application if the property changes ownership or if the applicant's name or address changes. An applicant may amend an approved part two of the application to notify SHPO of, and to request review of, modifications to the original description of the rehabilitation project. Amendments to part two of the application shall not include modification of the rehabilitation costs estimated in the originally approved part two of the application. Amendments to part two of the application shall not result in the reservation of additional tax credits for a project.

e. An application will not be accepted for a building placed in service more than five years before part two of the application is submitted.

48.6(2) No change.

48.6(3) ~~SHPO staff shall review and respond in writing to part two or part three of each completed application or to amendments to part two of an application (see rule 223—48.8(303,404A)) within 90~~

~~days of receipt.~~ SHPO staff shall review and respond to each part of a completed or amended application within 90 days of receipt when submitted pursuant to subrule 48.6(1). If an applicant submits more than one part of the application simultaneously, SHPO staff shall review each part sequentially and the 90-day review period for part two or three of the application will begin upon approval of the previous part.

~~a. — If an applicant submits more than one part of an application simultaneously, SHPO staff shall review each part sequentially.~~

~~b. — If an applicant submits more than one part of an application simultaneously, SHPO staff shall respond in writing to each completed application part sequentially, within 90 days of approval of the previous part of the application.~~

48.6(4) A part two of an application that includes the same scope of work as a rehabilitation project which qualifies for the federal rehabilitation credit under Section 47 of the Internal Revenue Code shall automatically be approved when ~~submitted~~ reviewed in accordance with ~~rule 223—48.8(303,404A)~~ subrule 48.6(7) and to the extent that all historic tax credits appropriated for the fiscal year have not already been reserved.

48.6(5) Response to application parts.

a. No change.

b. Review of part two of the application shall result in one of three responses which may be provided to the department of revenue:

(1) and (2) No change.

(3) The rehabilitation described in part two of the application is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards. The application will not be approved and SHPO will not reserve tax credits for the project.

c. Review of part three of the application shall result in one of two responses which may be provided to the department of revenue:

(1) No change.

(2) The rehabilitation is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards. If the work cannot be corrected to meet the Standards, the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

d. No change.

48.6(6) No change.

48.6(7) Approval of part two of the application.

a. Upon approval of part two of the application with no conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the ~~next available tax credit year~~ earliest year in which tax credits are available in the appropriate fund, and the applicant may proceed to implement the project.

b. Upon approval of part two of the application with conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the ~~next available tax credit year~~ earliest year in which tax credits are available in the appropriate fund. The applicant may proceed to implement the project, and the applicant shall document compliance with the conditions.

c. No change.

48.6(8) Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application.

a. If the qualified rehabilitation costs documented in part three of the application are less than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a certificate in an amount equal to 25 percent of the final qualified rehabilitation costs and return any unused tax credits

to the ~~available tax credit pool for other projects in the same funding queue~~ tax credit fund from which they were reserved.

~~*b.* — If the qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the documented qualified rehabilitation costs that exceed the qualified rehabilitation costs estimated in part two of the application for the next available tax credits in the same funding queue from which tax credits were initially awarded according to procedures established in rule 223—48.8(303,404A).~~

b. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs of \$500,000 or less: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

c. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs over \$500,000: The SHPO shall notify the applicant that the applicant may either:

(1) Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

(2) Claim only the final qualified rehabilitation costs up to \$500,000. If the applicant chooses this option, the SHPO shall issue tax credit certificates totaling no more than \$125,000 for the project, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

d. For projects with tax credits reserved from any other fund: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs in the same fund from which tax credits were initially awarded, with the initial tax credit certificate issued for the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the appropriate fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

ITEM 6. Adopt the following **new** subrules 48.6(9) and 48.6(10):

48.6(9) Disaster recovery projects. An applicant may apply for the disaster recovery fund as described in subrule 48.7(3) if the project meets the following requirements:

a. The initial submittal of part two of the application shall be made no later than the first filing window (see subrule 48.8(2)) that occurs after the five-year anniversary of the disaster declaration date. This time period may be waived in accordance with Iowa Code section 17A.9A. Petitions for waivers shall be directed to the Director, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319.

b. Disasters declared before January 1, 2008, will not be considered.

48.6(10) Projects creating new permanent jobs. An applicant may apply for the new permanent jobs fund as described in subrule 48.7(4) if the applicant meets the following requirements:

a. The applicant shall document the employment base for an eligible property on the date part one of the application is approved;

b. The applicant must provide information to SHPO documenting the creation of at least 500 new permanent jobs within two years of the date on which part three of the application is approved. This information shall be verified by the Iowa department of economic development using the process outlined in 261—Chapter 188, Iowa Administrative Code. If the Iowa department of economic development is

unable to verify the number of new permanent jobs required, tax credits claimed by the applicant will be subject to repayment to the department of revenue and unclaimed credits shall be unavailable; and

c. The applicant (and any leaseholders or tenants, if applicable) must enter into a contract with the SHPO specifying the employment base, reporting mechanisms required to document 500 new permanent jobs, applicable dates for reporting, and the penalty incurred if reporting requirements are not met. If the contract is not executed before the building is placed in service, the SHPO shall recapture any tax credits reserved in accordance with rule 223—48.12(303,404A).

ITEM 7. Amend rule 223—48.7(303,404A) as follows:

223—48.7(303,404A) ~~Funding queues~~ Tax credit funds.

48.7(1) ~~The small projects fund.~~ The SHPO shall reserve 10 percent of available tax credits the tax credit allocation for any tax credit year in a small projects funding queue for single projects with estimated fund for projects with final qualified rehabilitation costs totaling \$500,000 or less.

a. At the end of each state fiscal year, any ~~funds~~ credits in the small projects ~~funding queue fund~~ that have not been reserved for small projects shall be ~~transferred to the statewide funding queue for other projects~~ available for small projects in subsequent fiscal years.

b. If the small projects ~~funding queue fund~~ is fully reserved ~~before the end of a state fiscal year~~, any applications for small projects received after full reservation of the small projects ~~funding queue fund~~ may be eligible for the ~~cultural and entertainment district (CED) funding queue or the statewide funding queue~~ statewide fund.

48.7(2) ~~The cultural and entertainment district and great places fund.~~ The SHPO shall reserve 40 30 percent of available tax credits the tax credit allocation for any tax credit year in a CED funding queue cultural and entertainment district and great places project (CED-GP) fund for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C.

a. ~~At the end of each state fiscal year, any funds in the CED funding queue that have not been reserved for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C shall be transferred to the statewide funding queue for other projects.~~

b. ~~If the CED funding queue is fully reserved before the end of a state fiscal year, any applications for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C received after full reservation of the CED funding queue shall be eligible for the statewide funding queue.~~

48.7(3) ~~The disaster recovery fund.~~ The SHPO shall reserve 20 percent of the tax credit allocation for any tax credit year in a disaster recovery fund for projects located in an area declared a disaster area by the governor of Iowa or by the president of the United States. The eligible property must have been physically impacted as a result of the natural disaster as documented in accordance with the current state fiscal year's forms and instructions. The initial application for the project must be submitted within the time frame provided by subrule 48.6(9).

48.7(4) ~~The new permanent jobs fund.~~ The SHPO shall reserve 20 percent of the tax credit allocation for any tax credit year in a new permanent jobs fund for projects that involve the creation of more than 500 new permanent jobs within two years of the date on which part three of the application is approved.

~~48.7(3)~~ **48.7(5) ~~The statewide fund.~~** The SHPO shall reserve 50 percent the remaining percentage of available tax credits in a statewide funding queue for any tax credit year the tax credit allocation for any tax year in a statewide fund, which is to be used for eligible projects throughout the state of Iowa. If the statewide fund is fully reserved before the end of the state fiscal year, subsequent applications will be accepted utilizing the procedures in rule 223—48.8(303,404A).

48.7(6) ~~Fund selection.~~ Part two of the application shall clearly indicate the fund for which the applicant is applying. Only one fund may be selected. Any applications not indicating a specific fund shall be considered for the statewide fund. If an application is not eligible for the fund selected, it shall be considered for the statewide fund.

48.7(7) Disposition of unreserved credits. In reference to the new permanent jobs fund, CED-GP fund, and disaster recovery fund, at the end of the filing window in any fiscal year, any tax credits that have not been reserved will be reallocated in the same fiscal year as follows:

a. Unreserved CED-GP fund and new permanent jobs fund credits will be reallocated to the disaster recovery fund.

b. Unreserved disaster recovery fund credits will be reallocated to the statewide fund.

c. For purposes of this subrule, the phrase “in any fiscal year” refers to each of the three fiscal years for which credits may be reserved pursuant to Iowa Code section 404A.4(5) as amended by 2009 Iowa Acts, Senate File 481, section 3.

ITEM 8. Amend rule 223—48.8(303,404A) as follows:

223—48.8(303,404A) Sequencing of applications for review.

48.8(1) Order of review. The SHPO anticipates the receipt of a large number of applications for historic tax credits for projects with qualified rehabilitation costs in excess of \$500,000 at the beginning of each state fiscal year. At the start of each state fiscal year, the SHPO will utilize a project review sequencing and prioritization system to establish the order in which applications will be reviewed.

a. Applications for projects with qualified rehabilitation costs under of \$500,000 making application or less applying for credits from the small project funding queue projects fund will be accepted and reviewed throughout the calendar year until all available credits from that funding queue fund are reserved. When all available credits are reserved from the small project funding queue projects fund, subsequent applications will be accepted utilizing the procedures in subrules 48.8(1) to 48.8(6) for projects with qualified rehabilitation costs in excess of \$500,000 48.8(2) to 48.8(7).

b. If all available credits are reserved before review of all projects submitted within the filing window specified in subrule 48.8(2), applications not reviewed will be returned to the applicant.

48.8(2) Filing window. ~~Projects with qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) “b” and Part two applications for state historic tax credits received during the first ten working days of the state fiscal year shall be included in a project review sequencing system to determine the order in which they will be reviewed. The filing window for applications submitted in July 2009 will be extended to August 7, 2009.~~

48.8(3) Initial sequencing process. An initial sorting process based on the status of the project application at the start of the state fiscal year will be used to associate applications with the appropriate initial sequencing category. Following initial sorting into a category and subcategory, each application within the assigned category and subcategory will be sequenced in accordance with ~~rule 223—48.8(303,404A) subrule 48.8(4).~~

a. Category A projects do not need to be resubmitted during the filing window and are comprised of two subcategories in the following order:

(1) Projects reviewed in the previous year’s sequencing and review process that did not receive a reservation for the full 25 percent of their qualified rehabilitation costs.

(2) ~~projects~~ Projects with final qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) “b” and which could not be otherwise reserved from available credits in the appropriate funding queue fund.

b. Category B projects are comprised of projects for which part two of a state historic tax credit application was submitted during any previous year’s filing window, as verified by records maintained at the SHPO, and was included in that year’s sequencing system, and did not receive a tax credit reservation. Category B projects must be resubmitted during the current year’s filing window and must specify a fund pursuant to subrule 48.7(6). Category B projects will be divided into subcategories according to the state fiscal year of original submission. ~~arranged in the following order:~~

(1) Projects will be included in a subcategory for the state fiscal year of original submission provided the project was included in each successive state fiscal year’s sequencing system and did not receive a tax credit reservation. ~~Category B projects must be resubmitted during the present year’s~~

filing window. These subcategories will be arranged chronologically beginning with the earliest state fiscal year.

(2) Any projects for which applications were not submitted in successive state fiscal years will be included in a subcategory after those defined in subparagraph 48.8(3)“b”(1).

~~e. — Category C projects are comprised of projects with part two of a state historic tax credit application that includes the same scope of work approved for federal rehabilitation tax credits, as documented by a signed part two of the federal tax credit application approved prior to the first business day of the state fiscal year, and applications with rehabilitation costs in excess of \$500,000 which are not eligible for the federal program. Applications eligible for this category must include one of the following:~~

- ~~(1) — A new part two of the application with part one of the application already on file;~~
- ~~(2) — New parts one and two of the application; or~~
- ~~(3) — New parts one, two and three of the application.~~

~~c. Category D projects are comprised of an entirely new part two of a state historic tax credit application not meeting the requirements for any other category and having been received within the specified filing window. Projects may consist of parts one and two of the application, parts two and three of the application with a part one having already been submitted, or parts one, two and three of the application. Category C projects must be submitted during the current year’s filing window and must specify a fund pursuant to subrule 48.7(6).~~

48.8(4) Secondary sequencing process. Using a random number generator, SHPO staff will assign unique, random numbers to all applications that are eligible for inclusion in the review sequencing system within each category and subcategory of the initial sequencing system. Applications within each category, and subcategory, shall then be placed in numeric order from lowest to highest. SHPO staff shall then create a master ~~review~~ sequence list, with category A applications, ~~reviewed~~ arranged by subcategory, sequenced first; category B applications, arranged by subcategory ~~starting with the earliest state fiscal year of original submission, reviewed~~ sequenced next; and category C applications ~~reviewed~~ sequenced next; and category D applications ~~reviewed~~ sequenced last.

48.8(5) No change.

48.8(6) Outside observer. The initial sequencing process, the secondary sequencing process, and the development of the master ~~review~~ sequence list will be observed and certified by an official state witness.

ITEM 9. Adopt the following new subrule 48.8(7):

48.8(7) Prioritization of review according to fund. Once the master sequence list is set, the projects will be reviewed by fund in the sequential order in which they fall on the list.

a. Category A projects will be reviewed and reserved first. SHPO shall reserve the remaining credits for the project from the same tax credit fund selected by the applicant pursuant to subrule 48.7(6) if a selection was made. Otherwise, SHPO shall reserve the remaining credits for the project from the same tax credit fund from which the original reservation came or from another fund for which the project is eligible.

b. Following review of category A projects, tax credit funds will be reviewed in the following order:

- (1) Small projects fund, CED-GP fund, and new permanent jobs fund.
- (2) Disaster recovery fund.
- (3) Statewide fund.

c. Any tax credits that have not been reserved in a particular fund will be transferred, if applicable, to the appropriate fund as outlined in rule 223—48.7(303,404A). If a fund is exhausted before the completion of reviews for that fund, all remaining projects in that fund shall be eligible for the statewide fund and will be considered in the order shown on the master sequence list.

ITEM 10. Amend rule 223—48.9(303,404A) as follows:

223—48.9(303,404A) Reserved tax credits.

48.9(1) Upon written approval of part two of the project application, the SHPO shall reserve an estimated tax credit under the name of the applicant(s) in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the ~~next available tax credit year~~ earliest year in which tax credits are available.

48.9(2) and **48.9(3)** No change.

ITEM 11. Adopt the following new subrule 48.9(4):

48.9(4) Of the amount of tax credits that may be reserved in state fiscal years 2010, 2011, and 2012:

a. For state fiscal year 2010, SHPO will not reserve more than \$20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2009. SHPO will not reserve more than \$30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2010.

b. For state fiscal year 2011, SHPO will not reserve more than \$20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2010. SHPO will not reserve more than \$30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2011.

c. For state fiscal year 2012, SHPO will not reserve more than \$20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2011. SHPO will not reserve more than \$30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2012.

ITEM 12. Amend rule 223—48.10(303,404A) as follows:

223—48.10(303,404A) Project commencement.

48.10(1) No change.

48.10(2) In lieu of commencement of actual construction prior to the end of the state fiscal year in which the SHPO approved part two of the application, an applicant may notify the SHPO that the project identified in part two of the application was awarded low-income housing tax credits (LIHTC) from the Iowa finance authority in the same state fiscal year in which the SHPO approved part two of the application.

48.10(3) In the event actual construction on a project does not commence prior to the end of the state fiscal year in which the SHPO approved part two of the application in accordance with subrule 48.10(1) or 48.10(2), the SHPO shall recapture the tax credit reservation ~~and utilize those tax credit funds for additional applications~~ in accordance with the provisions of rule ~~223—48.8(303,404A)~~ 223—48.12(303,404A).

ITEM 13. Rescind rule 223—48.11(303,404A) and adopt the following new rule in lieu thereof:

223—48.11(303,404A) Project completion.

48.11(1) Once a tax credit reservation is made for a project, construction must be completed and the building must be placed in service within 36 months of the date on which part two of the application is approved. For projects with tax credits reserved prior to July 1, 2009, construction must be completed and the building must be placed in service on or before June 30, 2011. The applicant must submit part three of the application within six months of the date on which the building is placed in service regardless of the 36-month deadline, unless part three of the application is submitted simultaneously with part two.

48.11(2) In the event actual construction on a project is not completed and the building is not placed in service within the time period allowed in accordance with subrule 48.11(1), the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

ITEM 14. Rescind rule 223—48.12(303,404A) and adopt the following **new** rule in lieu thereof:

223—48.12(303,404A) Abandonment and recapture of tax credit reservation.

48.12(1) *Project abandonment due to inability to meet commencement deadline.* If the applicant has not provided the SHPO documentation of project commencement in accordance with rule 223—48.10(303,404A), the SHPO shall, by registered U.S. mail or courier sent to the last-known address of the applicant, request that the appropriate documentation be filed within 30 days of the date of the letter. If the SHPO has not received the documentation by the 30-day deadline, then the SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. If either letter is returned as undeliverable, the letter shall be filed and the tax credit reservation processed in accordance with subrule 48.12(5). Application processing fees for part two of the application as allowed by rule 223—48.16(303,404A) will not be returned.

48.12(2) *Project abandonment due to inability to meet project completion deadline.* If the applicant has not provided the SHPO documentation of project completion in accordance with rule 223—48.11(303,404A), the SHPO shall, by registered U.S. mail or courier sent to the last-known address of the applicant, request that part three of the application be filed within 30 days of the date of the letter. If the SHPO has not received part three of the application by the 30-day deadline, then the SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. If either letter is returned as undeliverable, the letter shall be filed and the tax credit reservation processed in accordance with subrule 48.12(5). Application processing fees for part two of the application as allowed by rule 223—48.16(303,404A) will not be returned.

48.12(3) *Project abandonment at the request of an applicant.* An applicant may choose to abandon tax credits reserved in accordance with subrule 48.6(7) at any time after the date on which the tax credit was reserved. A tax credit reservation may be voluntarily abandoned for any reason, including abandonment of a reservation from the small projects fund for consideration in another fund in accordance with paragraph 48.5(5) “b” or paragraph 48.6(8) “c.” Submittal of a new application will require the submittal of a new processing fee. Processing fees for the original part two application(s) as allowed by rule 223—48.16(303,404A) will not be returned. To abandon a tax credit reservation, the applicant shall send a letter to the SHPO requesting that the tax credit project be abandoned. The SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. SHPO shall process the tax credit reservation in accordance with subrule 48.12(5).

48.12(4) *Tax credit recapture if part three of the application is not approved.* If as part of the SHPO review of part three of the application pursuant to subrule 48.6(5) rehabilitation work is found to be inconsistent with the historic character of the property or the district in which it is located and the applicant is unwilling or unable to correct the work accordingly, the SHPO shall notify the applicant by registered U.S. mail or courier that the tax credit reservation has been recaptured and shall process the tax credit reservation in accordance with subrule 48.12(5).

48.12(5) *Tax credit return to appropriate fund.* The SHPO shall return any recaptured tax credit reservations to the tax credit fund from which they were reserved.

ITEM 15. Amend rule 223—48.16(303,404A) as follows:

223—48.16(303,404A) Application processing fees. A nonrefundable fee for application processing of parts two and three of an application will be charged for review of requests for certification of a rehabilitation project for historic tax credits. An initial review fee will be due with the filing of part two of an application. An additional fee for review of completed rehabilitation work will be due with the filing of part three of an application. Fees will be based on the amount of qualified rehabilitation costs. The fee schedule is as follows:

Part 2 Review Fee	For projects with qualified rehabilitation cost of:	
Residential (1-2 units) & barns	Under \$50,000	No cost
Residential (1-2 units) & barns	\$50,000 and over	\$250
Commercial or mixed-use properties (includes residential 3+ units)	Any amount	\$500
Part 3 Review Fee		
For projects with qualified rehabilitation cost of:		
Residential (1-2 units) & barns	Under \$50,000	No cost
Residential (1-2 units) & barns	\$50,000 and over	\$250
Commercial or mixed-use properties (includes residential 3+ units)	Under \$50,000	\$250
Commercial or mixed-use properties (includes residential 3+ units)	\$50,000 to \$1,000,000	.5 percent (.005) of qualified rehabilitation costs
Commercial or mixed-use properties (includes residential 3+ units)	Over \$1,000,000	\$5,000
<u>For projects with qualified rehabilitation costs of:</u>	<u>Part 2 Processing Fee</u>	<u>Part 3 Processing Fee</u>
<u>\$50,000 or less</u>	<u>No cost</u>	<u>No cost</u>
<u>\$50,001 to \$100,000</u>	<u>\$250</u>	<u>\$250</u>
<u>\$100,001 to \$500,000</u>	<u>\$500</u>	<u>\$500</u>
<u>\$500,001 to \$1,000,000</u>	<u>\$750</u>	<u>0.5 percent of qualified rehabilitation costs (i.e., 0.005 × costs)</u>
<u>\$1,000,001 to \$6,000,000</u>	<u>\$1,000</u>	
<u>Over \$6,000,000</u>	<u>\$1,500</u>	<u>\$30,000</u>

ITEM 16. Amend rule 223—48.17(303,404A) as follows:

223—48.17(303,404A) Appeals.

48.17(1) Applicants may appeal a decision of the ~~state historic preservation office~~ SHPO on any of the following bases:

- a. Action was outside statutory authority;
- b. Decision was influenced by a conflict of interest;
- c. Action violated state law or administrative rules;
- d. Insufficient public notice was given; or
- e. Alteration of the review and certification process was detrimental to the applicant.

48.17(2) to 48.17(4) No change.

ITEM 17. Adopt the following **new** subrule 48.17(5):

48.17(5) Applicants may appeal SHPO decisions provided under subrule 48.6(5) regarding eligibility of a property to be placed on the National Register as determined during part one of the application and review process or regarding whether a proposed scope of work meets the Standards as determined during part two of the application and review process. The SHPO shall provide procedural guidance to the applicant should the applicant choose to appeal to the National Park Service under this subrule.

ITEM 18. Amend **223—Chapter 48**, implementation sentence, as follows:
These rules are intended to implement Iowa Code ~~chapters~~ chapter 303 and chapter 404A as amended
by 2009 Iowa Acts, Senate File 481.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.